



MONTGOMERY COUNTY ETHICS COMMISSION

Kenita V. Barrow
Chair

Mark L. Greenblatt
Vice Chair

April 15, 2015

Advisory Opinion 15-03-006

A member of the County Council requests an advisory opinion pursuant to Section 19A-7 of the County's Public Ethics law as to whether the member should be recused from participating in the Council's discussion and action on Bill 11-15, Child Care Expansion and Quality Enhancement Initiative. The spouse of the councilmember has a license to operate a child care business and has operated the child care business from their home for 16 years.

Bill 11-15 would require the Department of Health and Human Services (HHS) to:

- (1) at least quarterly, hold an information session:
 - (A) for prospective family child care providers, on the steps necessary to become licensed by the State; and
 - (B) for licensed family child care providers, on the steps necessary to achieve State, regional, or national accreditation;
- (2) provide technical assistance and business training to family child care providers;
- (3) if requested, conduct a site-visit for potential family child care providers to provide feedback and assistance to obtain state licensing;
- (4) provide services in Spanish, and other languages as requested, in a culturally competent manner;
- (5) conduct an annual assessment of child care needs in the County; and
- (6) prepare an annual report, as required in subsection (d).

Montgomery County Ethics Commission

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The County's Public Ethics Law at 19A-11(a) provides: "[u]nless permitted by a waiver, a public employee must not participate in: (1) any matter that affects, in a manner distinct from its effect on the public generally, any . . . (C) property or business in which a relative has an economic interest"

The highlighted portion of the law reflects the crux of the issue presented: will the matter the member is to work on affect the spouse's childcare business in a manner that is distinct from its effect on the public generally? There are two elements that must be satisfied for section 19A-11(a)(1)(C) to apply: first, the matter must "affect" any property or business in which a relative has an economic interest, and second, the effect must be "distinct from its effect on the public generally."

Whether a particular bill or legislative action will "affect" an economic interest and "affect" an economic interest distinct from its effect on the public generally is a fact specific inquiry. Here, in the instance of the ownership by the employee's spouse of a child care business, the Ethics Commission concludes that any impact of Bill 11-15 on the Councilmember's spouse's business is so speculative that there is no "effect" on the spouse's business. As there is deemed to be no "effect" on the economic interest, the issue of whether the effect is distinct from the effect on the public generally need not be addressed.

The proposed bill does not seek to impose new requirements on child care businesses. Rather, it provides for advisory and educational services aimed primarily at helping to facilitate the establishment of child care providers. In theory, a consequence of the legislation could be that the number of licensed child care providers increases, creating greater competition for the spouse's child care business. The Commission believes that while the objective of the Bill is likely to facilitate the expansion of child care services in the County, the notion that this expansion could affect (positively or negatively) the spouse's established, 16 year old child care business appears to the Commission as being not only speculative, but unlikely.

The Commission concludes, based on the facts presented to it, the Councilmember may work on Bill 11-15, without violating the County Ethics Law. This opinion is based on the facts presented to it in the request for an opinion and does not extend to any amendments or other changes to Bill 11-15 that add requirements to or regulation of existing County child care businesses.

For the Commission:



Kenita V. Barrow, Chair

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